

MATERIAL HARMFUL TO MINORS

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheryl L. Allen

Senate Sponsor: Gregory S. Bell

Cosponsors:
Brad L. Dee

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LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the offenses of distribution of pornographic material and material harmful to minors.

Highlighted Provisions:

This bill:

► provides the following penalties for minors that distribute pornographic material or deal in material harmful to a minor:

- persons 16 or 17 years of age are guilty of a class A misdemeanor; and
- persons younger than 16 years of age are guilty of a class B misdemeanor;

► provides that a person 18 years of age or older who solicits a person younger than 18 to distribute pornographic material or deal in material harmful to a minor is guilty of a third degree felony and is subject to specified penalties; and

► provides that if a person younger than 18 years of age has previously committed the offense of dealing in material harmful to minors, the person is guilty of a third degree felony for each subsequent offense.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-10-1204**, as last amended by Laws of Utah 2007, Chapter 337

33 **76-10-1206**, as last amended by Laws of Utah 2008, Chapter 297



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **76-10-1204** is amended to read:

37 **76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for**
38 **Internet service providers and hosting companies.**

39 (1) A person is guilty of distributing pornographic material when [~~he~~] the person
40 knowingly:

41 (a) sends or brings any pornographic material into the state with intent to distribute or
42 exhibit it to others;

43 (b) prepares, publishes, prints, or possesses any pornographic material with intent to
44 distribute or exhibit it to others;

45 (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic
46 material to others;

47 (d) writes, creates, or solicits the publication or advertising of pornographic material;

48 (e) promotes the distribution or exhibition of material [~~he~~] the person represents to be
49 pornographic; or

50 (f) presents or directs a pornographic performance in any public place or any place
51 exposed to public view or participates in that portion of the performance which makes it
52 pornographic.

53 (2) Each distributing of pornographic material as defined in Subsection (1) is a
54 separate offense.

55 (3) It is a separate offense under this section for:

56 (a) each day's exhibition of any pornographic motion picture film; and

57 (b) each day in which any pornographic publication is displayed or exhibited in a

58 public place with intent to distribute or exhibit it to others.

59 (4) (a) An offense under this section committed by a person 18 years of age or older is
60 a third degree felony punishable by:

61 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
62 exhibited up to the maximum allowed by law; and

63 (ii) incarceration, without suspension of sentence in any way, for a term of not less
64 than 30 days.

65 (b) An offense under this section committed by a person 16 or 17 years of age is a
66 class A misdemeanor.

67 (c) An offense under this section committed by a person younger than 16 years of age
68 is a class B misdemeanor.

69 [~~(b)~~ ~~This~~] (d) Subsection (4)(a) supersedes Section 77-18-1.

70 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
71 encourages, or intentionally aids another person younger than 18 years of age to engage in
72 conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is
73 subject to the penalties under Subsection (4)(a).

74 [~~(5)~~] (6) (a) This section does not apply to an Internet service provider, as defined in
75 Section 76-10-1230, if:

76 (i) the distribution of pornographic material by the Internet service provider occurs
77 only incidentally through the Internet service provider's function of:

78 (A) transmitting or routing data from one person to another person; or

79 (B) providing a connection between one person and another person;

80 (ii) the Internet service provider does not intentionally aid or abet in the distribution of
81 the pornographic material; and

82 (iii) the Internet service provider does not knowingly receive funds from or through a
83 person who distributes the pornographic material in exchange for permitting the person to
84 distribute the pornographic material.

85 (b) This section does not apply to a hosting company, as defined in Section

86 76-10-1230, if:

87 (i) the distribution of pornographic material by the hosting company occurs only
88 incidentally through the hosting company's function of providing data storage space or data
89 caching to a person;

90 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
91 of the pornographic material; and

92 (iii) the hosting company does not knowingly receive funds from or through a person
93 who distributes the pornographic material in exchange for permitting the person to distribute,
94 store, or cache the pornographic material.

95 Section 2. Section **76-10-1206** is amended to read:

96 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions**
97 **for Internet service providers and hosting companies.**

98 (1) A person is guilty of dealing in material harmful to minors when, knowing or
99 believing that a person is a minor, or having negligently failed to determine the proper age of a
100 minor, the person intentionally:

101 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a
102 person the actor believes to be a minor, any material harmful to minors;

103 (b) produces, performs, or directs any performance, before a minor or a person the
104 actor believes to be a minor, that is harmful to minors; or

105 (c) participates in any performance, before a minor or a person the actor believes to be
106 a minor, that is harmful to minors.

107 (2) (a) Each separate offense under this section committed by a person 18 years of age
108 or older is a third degree felony punishable by:

109 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
110 exhibited up to the maximum allowed by law; and

111 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

112 (b) Each separate offense under this section committed by a person 16 or 17 years of
113 age is a class A misdemeanor.

114 (c) Each separate offense under this section committed by a person younger than 16
115 years of age is a class B misdemeanor.

116 [~~(b)~~] (d) [~~This section~~] Subsection (2)(a) supersedes Section 77-18-1.

117 (3) (a) If a defendant 18 years of age or older has [~~already~~] been previously convicted
118 [~~once~~] or adjudicated to be under the jurisdiction of the juvenile court under this section, each
119 separate [~~further~~] subsequent offense is a second degree felony punishable by:

120 (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article
121 exhibited up to the maximum allowed by law; and

122 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

123 (b) If a defendant younger than 18 years of age has been previously convicted or
124 adjudicated to be under the jurisdiction of the juvenile court under this section, each separate
125 subsequent offense is a third degree felony.

126 [~~(b)~~] (c) [~~This section~~] Subsection (3)(a) supersedes Section 77-18-1.

127 [~~(c)~~] (d) (i) This section does not apply to an Internet service provider, as defined in
128 Section 76-10-1230, a provider of an electronic communications service as defined in 18
129 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as
130 defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C.
131 Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

132 (A) the distribution of pornographic material by the Internet service provider occurs
133 only incidentally through the provider's function of:

134 (I) transmitting or routing data from one person to another person; or

135 (II) providing a connection between one person and another person;

136 (B) the provider does not intentionally aid or abet in the distribution of the
137 pornographic material; and

138 (C) the provider does not knowingly receive from or through a person who distributes
139 the pornographic material a fee greater than the fee generally charged by the provider, as a
140 specific condition for permitting the person to distribute the pornographic material.

141 (ii) This section does not apply to a hosting company, as defined in Section

142 76-10-1230, if:

143 (A) the distribution of pornographic material by the hosting company occurs only
144 incidentally through the hosting company's function of providing data storage space or data
145 caching to a person;

146 (B) the hosting company does not intentionally engage, aid, or abet in the distribution
147 of the pornographic material; and

148 (C) the hosting company does not knowingly receive from or through a person who
149 distributes the pornographic material a fee greater than the fee generally charged by the
150 provider, as a specific condition for permitting the person to distribute, store, or cache the
151 pornographic material.

152 (4) A service provider, as defined in Section 76-10-1230, is not negligent under this
153 section if it complies with Section 76-10-1231.

154 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
155 encourages, or intentionally aids another person younger than 18 years of age to engage in
156 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the
157 penalties under Subsection (2)(a).